

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KARL B. MANUEL,

Plaintiff,

v.

**SUPERINTENDENT MARK
CAPOZZA, C/O JOHN DOE #1,
C/O JOHN DOE #2, C/O SGT. WILES,
C/O LT. DAILEY, MEDICAL
PROVIDER, M.P.A. DARLA
COWDEN, ASST. SUPERINTENDENT
ERIC ARMEL,**

Defendants.

2:20cv1759

Electronic Filing

MEMORANDUM ORDER

This case is before the Court on a Report and Recommendation (“R&R”) filed by Magistrate Judge Kelly on December 20, 2023. The R&R recommends that 1) the pending motions for summary judgment by Correction Defendants Sgt. Wiles and Lt. Dailey and defendant Darla Cowden be granted and 2) judgment be entered against plaintiff and in favor of all defendants. This recommendation is based in part on plaintiff’s failure to advance sufficient evidence to support a finding that Dailey had a realistic opportunity to intervene in the asserted assault; plaintiff has failed to establish a genuine issue of material fact that he properly exhausted his administrative remedies as required by the PLRA; plaintiff failed to produce sufficient evidence to support his claims of deliberate indifference to medical care; plaintiff failed to file a Certificate of Merit in support of his medical negligence claim against Cowden; and plaintiff failed to serve the unidentified "Medical Provider" in accordance with Federal Rule of Civil Procedure 4(m). Given this disposition, it is further recommended that judgment be entered in favor of all defendants and the Clerk of Court mark the case closed.

The Report and Recommendation was issued on December 20, 2023, and directed plaintiff to file any objections within 14 days. No objections have been filed. Consequently, after *de novo* review of the record, the following order is entered:

AND NOW, this 1st day of February, 2024, upon due consideration of the pending motions for summary judgment by Correction Defendants Sgt. Wiles and Lt. Dailey and defendant Darla Cowden, IT IS ORDERED that [73], [77] the motions be, and the same hereby are, granted. Summary judgment is granted against plaintiff and in favor of these defendants on all remaining claim in the case;

IT FURTHER IS ORDERED that the claims against the unidentified "Medical Provider" be dismissed pursuant to Federal Rule of Civil Procedure 4(m); and

IT FURTHER IS ORDERED that judgment is hereby entered against plaintiff and in favor of defendants on all remaining claims in the case. A final judgment order pursuant to Rule 58 will follow.

The [89] December 20, 2023, Report and Recommendation as augmented above is adopted as the Opinion of the Court.

s/David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

cc: Karl B. Manuel
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James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

(Via First Class Mail)

The Honorable Maureen P. Kelly
United States Magistrate Judge

(Via CM/ECF Electronic Mail)